

Meeting Minutes
Mercury Citizen Advisory Committee
January 18, 2002
WMC, 501 East Washington Avenue
Madison WI

Facilitator: Bert Stitt

Members Attending: Eric Uram, Sierra Club; Steve Hiniker, Citizens Utility Board; Keith Reopelle, Wisconsin Environmental Decade; Russ Ruland, Muskellunge Club of Wisconsin; Ed Wilusz (alternate), Wisconsin Paper Council; Jeff Schoepke, Wisconsin Manufacturers & Commerce; Joe Shefchek, Alliant Energy; Wayne Stroessner, Random Lake Association; John Coleman, Great Lakes Indian Fish & Wildlife Commission; Bill Skewes, Wisconsin Utilities Association, Inc.; Dave Hoopman, Wisconsin Federation of Cooperatives; and Mark Yeager (alternate), Environmentally Concerned Citizens of Lakeland Areas;

Others Attending: Bob Fassbender, HFO and Associates; Marc Looze, Wisconsin Environmental Decade; Lloyd Eagan, Marty Burkholder and Anne Bogar, DNR.

Welcome

Lloyd Eagan welcomed the Committee and thanked Jeff Schoepke and Wisconsin Manufacturers and Commerce (WMC) for the use of the facility for the meeting.

Check-In Round

Bert Stitt conducted a check-in with Committee members. Committee members were doing well and ready to work.

January 9th Meeting Minutes Review

Steve Hiniker requested that his name be deleted from the minutes as he did not attend the meeting. There were no other changes.

Agenda Review

There were no changes to the meeting's agenda.

Revisit Report Outline/Develop

The Committee members deferred discussion on this item as Kathleen Standen was not at the meeting and she authored the alternative outline. Bert suggested that a small subgroup of the Committee work on merging the two outlines and further developing a report outline and report back to the Committee at its next meeting. A subgroup was formed including: Steve Hiniker, Kathleen Standen, Keith Reopelle, Jeff Schoepke and Marty Burkholder. Marty will convene the group.

Technical Advisory Group Environmental Assessment Technical Brief

Marty Burkholder made a presentation on preparing environmental assessments and the draft Environmental Assessment Technical Brief from the Technical Advisory Group (TAG). Marty outlined the purpose of an Environmental Assessment and the process to develop one. He noted that the Environmental Assessment for the proposed rule is a draft which will be revised and presented to the Natural Resources Board. He noted that there is a process for those who disagree with the Department's determination that an Environmental Impact

Statement (EIS) is not needed. There is a 30-day file period to request judicial review after it is presented to the Natural Resources Board.

Marty noted that the draft Environmental Assessment Technical Brief outlines key issues identified by the TAG, including items which the TAG has identified as missing in the draft Environmental Assessment. He said that the TAG is developing language to explain each issue and has also identified a number of questions that have not been answered.

Joe Shefchek asked if there were any examples of a Department rule that has required an EIS. Lloyd and Marty each responded that they were not aware of any rule which had required an EIS. Lloyd commented that there is the potential for a rule regulating one media to have an adverse environmental impact on another media, so the assessments are useful. Keith Reopelle commented that Class I actions which require an EIS automatically include mines and power plants. He noted that the purpose of an environmental assessment is to make a determination of whether there is any adverse impact. Since the Department's rules are intended to have positive impacts, EISs have not been required.

Steve Hiniker asked what the threshold in statutory or rule language is for an EIS. Lloyd responded that the Bureau of Integrated Science Services in the Department advises DNR on whether an environmental assessment or an EIS should be done. The decision is based on classifications of actions. Type I actions require an EIS, Type 2 actions require an environmental assessment and Type 3 actions require neither. She noted that the Committee could request that the Bureau of Integrated Science Services staff make a presentation if members would like more detail on this issue.

Joe Shefchek noted that the environmental assessment is informative but that there seems to be a real difference between the traditional assessments conducted by the Department and the type of environmental analysis that the Committee is looking for.

John Coleman noted that the brief does not include detail on other perspectives. He commented that the briefs should include perspectives from stakeholders other than just the TAG and Committee members. Marty responded that the TAG was just trying to outline and identify the issues at this point.

Jeff Schoepke commented that the technical brief needs more detail. Marty replied that the TAG was still discussing some issues which will be included so this is a working document and only outlines the issues. Jeff asked if the brief would include information on costs and include more perspectives on each issue. Marty responded that more perspectives will be included and that separate briefs are being prepared on costs and fly ash, as well as a couple of other more complex issues.

Keith Reopelle commented that the Assessment is the Department's document and not the work of an advisory group. Thus, the Department doesn't need to detail all other perspectives but these should be taken into account as the Department revises the Environmental Assessment. Marty commented that Environmental

Assessments do need to look at areas of controversy so there will be more discussion on those issues.

Jeff Schoepke asked what the timeline for a final brief was. Marty responded that a final should be done in a couple of weeks.

Wayne Stroessner asked whether the state Tourism office has any data on tourism economic losses that are attributed to the mercury contamination in lakes. Russ Ruland commented that he had checked on that and there was no study, however, there had been speculation that if the fish consumption advisory was expanded – and it was – that people would go elsewhere.

Action: Russ agreed to check with the Department of Commerce to see if they had any written materials on tourism effects.

Ed Wilusz asked whether the modeling will be assessed in the brief. Marty responded that a section of the Assessment will address modeling, identifying the underlying basis and what it can do.

John Coleman commented that he understood that the Environmental Assessment was the Department's assessment of issues but he hoped that other technical briefs would assess other perspectives. Marty commented that the Assessment is ultimately the Department's findings but noted that it will be revised to reflect other perspectives that the Department has come to agree with. Eric Uram encouraged the Department to look beyond Wisconsin-specific data – for example, Canada and Minnesota – in its assessments.

Several Committee members asked about the timeframe for reviewing other technical briefs. Bert noted that the February 13 and 26 meetings are targeted for discussion on TAG briefs. Members were also referred to the schedule of TAG briefs distributed at the Jan. 9 meeting, which outlines the TAG's briefs and when the briefs will be distributed by email to the Committee. Members expressed particular interest in seeing the technical briefs on costs and fly ash soon.

Bill Skewes asked if the Environmental Assessment would include evaluations of the mercury impacts on wildlife. Eric Uram urged that these assessments be part of the Environmental Assessment or a separate presentation. Joe Shefchek commented that the utilities have been supporting research such as the loon studies.

Priority Matrix/Index to Proposed Rules

Anne Bogar noted that the matrix distributed by email had been updated just that morning with new entries and she distributed the updated version. Wayne's items for the matrix (items 7, 8 and 9) were distributed as a separate handout. Keith Reopelle gave his references for items 1 and 2 verbally (there are no references in the rule for item 3), noting that he had emailed his response to Jon Heinrich and Anne did not see them.

Bert gave the Committee time to review the matrix and asked members to write their questions on stickies. Bert suggested staff move the "name" column on the

matrix to between the “issue” column and the “index to rule revisions” column so that additional persons could add comments.

Action: Staff will move the “name” column on the matrix to allow for comments by additional persons.

The stickies were then collected; there were six questions.

The first question was “What type of ‘credit’ is referred to in Joe’s comment on Issue # 23? Is this monetary or the ‘right’ to allow more mercury into the atmosphere at another time or place?” Before Joe responded, the Committee had a discussion about the order in which to review issues in the matrix. Several members made the point that questions should be answered in the order of priority of the issues. Other members suggested that the Committee work through all the issues in priority order and take up any questions on that issue then. These points led to a discussion of the purpose of the matrix and how the Committee should use it. Jeff Shoepke summarized what Committee members said. He said that the Committee was saying that the matrix was a tool that could be: 1) a quick reference; and 2) a jumping off point for discussions. Lloyd commented that a third point that was made was that the matrix directs comments and changes to language in the rule that staff should review.

Action: Staff will add these three points in the “Purpose” statement for the matrix.

Joe Shefchek said that the “index” column should then be just a quick reference, with the “comments” section more detailed and suggested that a “potential revisions” column be added. Bert suggested that a column be added to capture the TAG perspective on the items.

Action: Staff will add “potential revisions” and “TAG input columns to the matrix.

Bert directed the Committee to begin its discussion of the priority items, starting with the first one: “Agree schedule of reductions. Criteria for setting mercury reduction levels. Why do we need phased reductions?”

John Coleman noted that the phased reductions were discussed on pages 8 and 9 of the June 5, 2002 memorandum from Sec. Bazzell to the Natural Resources Board. Joe Shefchek said that he did not think the utilities had agreed to this schedule of reductions or criteria for why it’s phased. He commented that he thought they could get closer to agreeing to phasing but it depends on the endpoints. If the proposed rule were adopted, plants would plan now for 90% reductions, because that is the endpoint. Phasing may be OK, but the endpoints are key.

John Coleman asked if endpoints were then the only issue, not timing. Joe responded that phasing allows plants to experiment by allowing different technologies to be tried on different units. But it doesn’t make sense to put in a technology to get 50% reductions, and then rip it out to get 90% reductions five years later. Maybe you could get 50 % reductions at all plants rather than 90% at one or two.

Lloyd Eagan commented that the phasing was included to recognize the uncertainties in the technologies. Carbon injection can work, but it does have operation and maintenance costs and waste disposal issues. So, while it's a low capital cost there are other costs. That's why the proposed rule did not require a certain type of technology be installed.

Jeff Schoepke commented that he did not think there is debate on phasing but there is disagreement on what the reduction schedule should be. Joe said the initial phases are not a point of major disagreement, but the jump to 90% is a problem. He noted that the 90% becomes a requirement of the law regardless of whether the technology is available or not. He said there would not be a problem with a goal of 90% but there is a problem with a 90% requirement.

John Coleman asked whether it would be better to weigh in more on early reductions, since those early reductions were not really an issue. Joe Shefchek commented that he has been speaking for his company only and noted that is a sharp climb in costs from 50% to 90% reductions. John commented that we may be able to get better environmental benefits from achieving earlier reductions rather than waiting fifteen years for 90% reductions.

Bill Skewes noted that the utilities had proposed 10% reductions in five years and 40% in ten years. Joe noted that the gaps in the cost estimates between the Department and the utilities were mostly at the 90% reduction level. He said MACT was also an issue.

Keith Reopelle asked what technologies the 10% and 40% reductions were based on. Bill Skewes responded that those will be done differently at different plants. He said there may be some fuel switching, some baghouse or a control technology that we don't yet know about. Joe commented that he believed the 40% reduction came up because WEPCO had agreed to 40% in 10 years in discussions with the Department and the other utilities agreed to match those reductions. He said WEPCO is ahead of other companies on this issue.

Jeff Schoepke commented that even 40% is a leap of faith for the utilities. He said he understood that the 30% and 50% reductions are still expensive.

Eric Uram noted that the federal MACT will be applied across the board. He said that 10% reductions were being surpassed now by the best operating plants and that 30% and 50% reductions should not be out of the ballpark. Joe commented that he thought MACT will be 90%. He said it was just a sense that 90% will ultimately be the requirement. He said he is hearing that MACT will be technology forcing and in the percentages above 50% reductions. He suggests that we let MACT take the reductions to the next level and do the lower reductions in this rule. Keith Reopelle said he was hearing similar things – that is, that MACT would be in the 70-90% range but he was not sure how credible this information was. Eric Uram noted that he was hearing that there may be subcategories for MACT based on fuel type.

Action: Staff will look at adding a “remedy” column and an “alternative recommendations” column to the document as they discuss revising it.

Steve Hiniker asked if the utilities cost summary was available.

Action: Jeff Schoepke said he would provide a copy of the cost summary to all Committee members.

Jeff noted that there is a timetable for MACT under court order. The draft is to be done by 2003, comments in 2004 and promulgation by 2007.

John Coleman noted that many of the Committee’s priority items are addressed in the June 5, 2001 memo from Sec. Bazzell to the Natural Resources Board and suggested indexing the priority items in the matrix to the proposed rule and to the memo.

Action: The Committee members agreed to include references to the memo in the rule index column.

Bert noted the time left for the rest of the agenda was limited and asked the Committee to assess how this discussion went. Committee members commented that it was a valuable and necessary discussion that will help discussions on other priority items. This item is seen as a core issue. Bert asked members if discussions should be taped.

Action: Committee members agreed taping was not necessary but that key points from the discussion should be added to the comments section of the matrix and that the details of the discussion should be included in the minutes.

Follow-up: The following questions and comments on the matrix were recorded on stickies but not discussed at this meeting:

- 1) Several issues are addressed in Bazzell’s June 5, 2001 memo, for example, on page 2, “harmonizing with federal rule” is covered – is this in the rule? (John Coleman)
- 2) Item 12 in the matrix: There is more research available.
- 3) Item 23 in the matrix: What type of “credit” is referred to in Joe’s comment on “credit” for early federal MACT? Is this monetary or the “right” to allow more mercury into the atmosphere at another time or place?
- 4) Item 23 in the matrix: Would adding “regulatory, legal” before “scientific and technological development” address concern here?
- 5) Item 24 in the matrix: Under comments, sentence number 3, fuel switching “could” reduce mercury? It clearly would, then the sentence goes on to say “but increase/change other....air pollutants.” Really, what would increase?
- 6) Item 24 in the matrix: Other hazardous air pollutants (acid gases, VOCs and carcinogens? Utility MACT will look at this universe.

John Coleman noted that he had copies of the table of contents, Committee Findings and Recommendations and references for a report “Toxicological Effects of

Methylmercury,” prepared by a Committee of the National Research Council, 2000. A full copy of the report is available at:
www.nap.cdn/openbook/0309071402/html/RI.html.

Action: Staff will make copies of John’s handout for Committee members.

Summary Of Key Points from January 9th “Why This Rule” Discussion

Anne Bogar presented the Summary of Key Points and asked for Committee feedback on the document. Jeff Schoepke asked for clarification on the response to the question about waiting for the Devil’s Lake study results before moving ahead with the proposed rule. He said he thought the Department had said “no.” After a brief discussion, Anne agreed to state the response as a “no” and clarify the context of the response. In response to a couple additional questions, Anne agreed to add information from a study in the Everglades and to clarify the statement on the Center for Disease Control study on blood levels in mercury after discussions with Ed Newman.

Expert Resources

US EPA MACT rule development – Anne Bogar distributed a draft letter from Committee members inviting US EPA to attend a future meeting of the Committee. She noted that Jon Heinrich had drafted the letter from the Committee thinking that it may be more persuasive than an invite from Department staff. Committee members agreed that the letter was a good idea and made a couple requests for changes to the letter.

Action: Anne will revise the letter by adding Lloyd Eagan as a Committee member, dropping the March 6 meeting date and offering to meet with EPA on another date in February if February 13 and 26 are not good dates and adding that the presentation also address the industrial boiler MACT.

Eric Uram noted that he would like the presentation to include EPA staff who can address health issues as well. Joe said he would like to discuss multi-pollutant issues also. Committee members agreed that they have other questions for EPA but that the letter of invite should focus on MACT issues and that the letter should go out quickly.

Public Health Impact – Anne Bogar told the Committee that Lynda Knobloch, DHFS, was available to make a presentation at the February 13 Committee meeting. Committee members agreed to have her make a presentation at the next meeting.

Other - Anne Bogar said that Jon Heinrich had requested a memorandum on the legal issues of MACT and the proposed rule and that Tom Steidl, DNR attorney, would be able to present the memorandum at the February 13 meeting. The Committee agreed to have Tom present at the next meeting.

Parking Lot

Anne Bogar distributed a handout titled "Parking Lot Issues" that Jon Heinrich prepared to track parking lot issues and their responses for the Committee.

Setting the Next Agenda

The Committee tentatively set the following items for the next Committee meeting on February 13, 2002.

Lynda Knobloch presentation – 60 minutes

EPA Presentation – 120 minutes

Tom Steidl presentation – 60 minutes

TAG Report/briefs – 60 minutes

Report Outline – report by Subgroup

Matrix – at end of agenda but make time for it

The Committee agreed to meet until 2:30 p.m. with a 45 minute break for lunch (lunch will be delivered for those who order ahead). However, if EPA can make this meeting, the Committee agreed to meet until 4:30 p.m. If the EPA can attend a future meeting, the Committee agreed to invite the TAG members and let them ask questions.

Closing Round

During the closing round, the Committee members noted that they were making progress and that the matrix discussion was particularly valuable. Members expressed a strong interest in more substantive discussions like today's. John Coleman asked for a quick poll of members on whether they preferred an 80% requirement or a 90% goal. Results were mixed.